

United States Court of Appeals - Tenth Circuit

CRIMINAL JUSTICE ACT

CLAIMS FOR HOURLY COMPENSATION AND EXPENSE REIMBURSEMENT

ADVICE TO COUNSEL
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ADVICE TO COUNSEL

I. General Statutory Provisions

Counsel appointed to provide appellate representation under the Criminal Justice Act may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). For representation completed by November 12, 2000, counsel’s total hourly compensation is limited to \$2,500; for vouchers including any compensable work billed after that date, the statutory limit has been increased to \$3,700 (\$3,900 for parole appeals). See § 3006A(d)(2). In either case, however, these presumptive maximums may be exceeded if the representation provided was “extended or complex” and there is a judicial certification that such excess payment is necessary to afford fair compensation. Excess payment must also be approved by the chief circuit judge or her delegate. See § 3006A(d)(3).

II. Excess Compensation Claims

If hourly compensation is sought in excess of the statutory maximum, counsel must submit a concise memorandum showing that the representation was extended or complex and that excess payment is necessary for fair compensation. Counsel may address, as applicable, the complexity/novelty of the issues and shall indicate whether any of these issues were briefed at the district court; matters researched but not briefed; the magnitude and precedential importance of the case; special skills, knowledge, and experience required of or used by counsel; the nature of counsel’s practice and any hardship resulting from the representation; and any unusual pressure of time or other factors under which professional services were delivered.

III. When to File

Claims must be submitted on a CJA 20 form within 45 days of final disposition of the case, unless good cause is shown for delay. If counsel is applying for certiorari, then the voucher must be submitted within 45 days after the grant or denial of the petition.

IV. What to File with CJA 20 Form

A. Documents

Copies of the docketing statement, briefs, petitions for rehearing and/or certiorari (if any), and motion for release (if filed in court of appeals).

B. Compensation Worksheets

Attorney time must be documented on the enclosed “In-Court” and “Out-of-Court” worksheets, or on a substantially similar form. Time must be broken down according to date (in chronological order), description of services, amount of time in hours and tenths of an hour, and according to the categories established for payment under the CJA. If billing records are not reported in tenths of an hour, the court will round down the total hours claimed.

Use of the enclosed worksheets facilitates the court’s review of counsel’s request for compensation, but billing records may be submitted in place of the worksheet so long as they are in chronological order, all hours claimed are assigned to one of the five CJA categories, and the totals for each category are listed on the face of the voucher.

Failure to provide sufficient detail to permit meaningful review of a claim may result in delay or denial of approval of the claim.

Note: records must be retained by counsel for three years after approval of the voucher.

C. Expense Worksheets

Expenses must be documented on the enclosed expense worksheets, or on a substantially similar form. Counsel must provide expense documentation to support claims for reimbursement, such as bills, receipts, or invoices. Credit card slips and credit card statements are *not* sufficient.

V. Claims for Hourly Compensation - General Rules

A. Hourly Rates

In light of recent CJA panel attorney rate increases, counsel is advised to refer to the attached *Criminal Justice Act Payment Rates* (which may differ from the rates stated on the voucher), to ensure proper hourly rates are recorded on the vouchers for the dates worked. Before submitting a voucher to the clerk, counsel may wish to visit the CJA link on the court’s website (<http://www.ca10.uscourts.gov>) to ensure compensation at the correct hourly

rates. Submission of a voucher with incorrect rates may result in payment at a lower hourly rate than that to which counsel may be entitled.

B. In-Court Time

In-court time is generally limited to one hour or the actual time of argument. Waiting time may be claimed as out-of-court time.

C. Partners and Associates

Compensation may be claimed for services provided by a partner or associate in appointed counsel's law firm, but extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable.

D. Withdrawal of Counsel

An attorney appointed to represent a defendant in the lower court is generally obligated to continue representation on appeal. An attorney who does not desire to continue representation must file a motion to withdraw with the clerk of this court in accordance with 10th Cir. R. 46.4. Failure to comply with this rule will result in denial of the motion. In the event an attorney is allowed to withdraw, the voucher will not be considered for payment until the appeal is terminated, or, if a petition for writ of certiorari is filed, the grant or denial of that petition.

E. Substitution of Counsel

If an attorney is substituted for one previously appointed in the same case, the total compensation to both attorneys shall not exceed the statutory maximum for one party, unless the case involves extended or complex representation. No vouchers will be considered for payment until the appeal is terminated, or if a petition for writ of certiorari is filed, the grant or denial of that petition.

F. Time Spent on Matters Unrelated to Appeal

Time spent on matters unrelated to appellate representation, even if incidental to arrest or incarceration, is not compensable.

G. Travel Time

Necessary and reasonable travel time is compensable. Time spent in travel by car over long distances ordinarily traversed by air is not reasonable, unless required by special circumstances. If a trip requires overnight lodging, compensable travel time includes time traveling from the claimant's office or

home to the place of accommodation, as well as travel time returning directly to the claimant's office or home.

H. Petition for Writ of Certiorari

Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari, or responding to a petition for writ of certiorari filed by the government, are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.

If a petition for writ of certiorari is to be filed, counsel should not submit the CJA voucher until *after* the work related to the petition for writ of certiorari is completed. Submitting one comprehensive voucher that includes work related to any petition for writ of certiorari ensures consistent application of the statutory compensation limits and consistent assessment of the need for judicial certification in cases requesting compensation in excess of the statutory maximum.

I. District Court Work

Claims for work done incidental to representation in district court (even if on remand) may not be included on an appellate voucher.

J. Voucher Preparation

Time spent preparing the voucher is not compensable.

VI. Reimbursement of Travel Expenses - General Rules

A. Reporting Travel Expenses on Voucher

Claims for travel expenses must be itemized and reported in Block 17 of the CJA 20 form.

B. Supporting Documentation for General Travel Expenses

All travel expenses (surface transportation, lodging, meals, mileage, parking, tolls, etc.) must be supported by receipts; credit cards slips and credit card statements are *not* sufficient.

C. Determination of Reasonable Expenses

Reimbursement is limited to reasonable, actual expenditures. To determine whether expenses are reasonable, counsel should be guided by limitations on travel expenses applicable to federal judiciary employees, contained on the attached *Criminal Justice Act Payment Rates*. Rate updates are available from the Clerk's office upon request.

D. Supporting Documentation for Lodging/Meals

Receipts for lodging and meals must be sufficiently detailed to establish that reimbursement is not being sought for alcoholic beverages, safe deposit boxes, hotel safes, in-room movies, or other expenses that are not reimbursable under the CJA. For this reason, hotel and restaurant bills must be submitted; credit card receipts or credit card statements are *not* sufficient.

E. Air Travel

Air travel should be arranged through National Travel Service and government rates obtained for both transportation and lodging. Copies of the travel authorization issued by this court, NTS itinerary, and passenger receipt should be attached to the voucher.

F. Travel by Private Automobile

Automobile mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. Claims should be supported by a statement showing the date, distance, origin and destination of travel. If travel is by automobile, the total mileage expense shall not exceed the fare authorized by National Travel Service for tourist-jet accommodation, except in an emergency, or other unusual circumstances.

G. Hotel Telephone

Hotel telephone charges are reimbursable only if incidental to representational duties. Counsel must explain how the charge is incidental to representational duties to receive reimbursement.

H. Personal Items

Personal items (alcoholic beverages, in-room movies, etc.) are not reimbursable.

VII. Reimbursement of Other Expenses - General Rules

A. Reporting Other Expenses on Voucher

Claims for non-travel expenses must be itemized and reported in Block 18 of the CJA 20 form.

B. Supporting Documentation for Other Expenses

Counsel must provide expense documentation to support claims for reimbursement, such as bills, receipts, or invoices; credit card slips and credit card statements are *not* sufficient.

C. In-House Copying

In-house copying is limited to actual costs, and no more than \$.10 per page. If a higher rate is sought, counsel must submit a memorandum showing why the rate is justified.

D. Commercial Copying

Claims for commercial copying services must be supported by an itemized invoice; credit cards slips and credit card statements are *not* sufficient.

E. Long-Distance Telephone Calls

Itemized statements must be submitted to support claims for long-distance telephone calls. The supporting documentation must contain the date, cost, recipient of each call, and a short explanation of how each call related to counsel's appellate representation.

F. Facsimile Transmissions

Itemized statements must be submitted to support claims for in-house facsimile transmissions. The supporting documentation must contain the date, total cost (including per page rate), recipient of the document, and a short explanation of how the facsimile transmission related to counsel's appellate representation.

Claims for facsimile transmissions at a commercial establishment must be supported by a detailed receipt. The supporting documentation must contain the date, total cost (including per page rate), recipient of the document, and a short explanation of how the facsimile transmission related to counsel's appellate representation.

G. Postage/Expedited Mail/Courier

Itemized statements must be submitted to support claims for postage. The supporting documentation must contain the postal receipt (if any), date, nature of service, and cost.

Federal Rule of Appellate Procedure 25(a)(2)(B) states that a brief or appendix is timely filed, if on or before the last day for filing, it is:

- (1) Mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- (2) Dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.

Therefore, the added expense for overnight delivery is not ordinarily reimbursable. The use of expedited mail for filing the petition for rehearing is reimbursable (the court recognizes the short time period for its filing), if proper supporting documentation is provided.

Professional time spent traveling to the court to file a pleading is not compensable.

H. Legal Research by Law Student, Law Clerk, Paralegal

Claims for the actual cost of legal research by a qualified law student, law clerk, or paralegal must be supported with a brief statement of the need for and subject matter of the research; an estimate of the cost of attorney time that would have been required to do the research; and the actual hourly cost of employing such personnel.

I. Computer Assisted Legal Research

Claims for the actual cost of computer assisted legal research must be supported with a brief statement of the subject matter of the research, the length of time to perform the research, and a copy of the bill for the service or an explanation of the precise basis for the charge.

J. General Office Overhead

General office overhead is not reimbursable—this includes, but is not limited to: supplies; overtime; secretarial services; rent; telephone services; mailers/envelopes; time spent copying, faxing or mailing documents; and other administrative/clerical services (nor is professional time spent on such tasks compensable as part of counsel's fee).

K. Expenses of Personal Nature for Individual Representing

The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.

L. Expenses Unrelated to Appeal

Expenses unrelated to appellate representation, even if incidental to arrest or incarceration, are not reimbursable.

M. Interpreter Services

Prior authorization from the presiding judicial officer must be secured for all interpreter services where the cost will exceed \$300. Prior authorization shall be sought by filing a motion including an estimation of the costs and a statement why the expense is reasonable and necessary. Failure to obtain prior authorization will result in the disallowance of any amount claimed in excess of \$300, unless the presiding judicial officer finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization.

N. Filing Fees

Filing fees are not reimbursable.

O. Transcript Fees

The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a CJA 24 form; if counsel has elected to pay for these, counsel should likewise seek reimbursement on a CJA 24 form, not a CJA 20 form.

VIII. General Information

A. Public Disclosure

CJA 20 vouchers filed by counsel may be subject to public disclosure unless disclosure should be limited based upon: (1) protection of any person's Fifth Amendment right against self-incrimination; (2) protection of the defendant's Sixth Amendment right to effective assistance of counsel; (3) the defendant's attorney-client privilege; (4) the work-product privilege of defendant's counsel; (5) the safety of any person; or (6) any other interest that justice may require. If counsel wishes to request redaction or non-disclosure of any portion of the voucher based upon one of these interests, counsel should seek such relief by motion at the time the voucher is filed. Absent such a motion, the face of the voucher will be made available to the public upon request.

B. Panel Attorney Data Form

Counsel is required to provide his/her social security number by completing a Panel Attorney Data Form, which is included with your voucher. If prior to your appointment, you had a pre-existing agreement with a law firm or corporation, including a professional corporation, indicating the CJA earnings belong to the law firm or corporation, rather than to you as the court-appointed attorney, provide the name and address of that law firm or corporation on the Panel Attorney Form. This information will allow earnings to be reported to the Internal Revenue Service (IRS) on a 1099 Statement as earnings of the law firm or corporation and not as earnings of the attorney appointed.

The Panel Attorney Data Form enables CJA counsel to enter their social security number and their law firms's taxpayer identification number, on the following basis:

(1) If the appointed attorney does not have a preexisting agreement with a law firm or corporation, including a professional corporation, an information return will be filed with the IRS in the attorney's name. The attorney must enter his or her social security number in this situation.

(2) If the appointed attorney has a preexisting agreement with his or her law firm or corporation, including a professional corporation, (resulting in income being reportable by the law firm) an information return will be filed with the IRS in the law firm's name. Thus, the attorney must enter his or her social security number, **and** the law firm's employer tax identification number, as well as the name and mailing address of the law firm.

C. Court's Website

Counsel is encouraged to visit the CJA link on the court's website (<http://www.ca10.uscourts.gov>) to review current rates, forms, and general information.

IX. Note to Counsel

This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive. Questions regarding the completion of vouchers are welcome. Counsel representing clients under a sentence of death should refer to the court's separate memorandum referencing procedures in capital cases. Counsel in those matters should also review 21 U.S.C. § 848(q).

Source: Volume VII, Guide to Judiciary Policies and Procedures, Chapter II, Part C

CRIMINAL JUSTICE ACT PAYMENT RATES

HOURLY RATES

<u>Professional Services Delivered</u>	<u>12/31/99 and before</u>	<u>1/1/00 and after</u>	<u>4/1/01 and after</u>	<u>5/1/02 and after</u>
In-court	\$65	\$70	\$75	\$90
Out-of-court	\$45	\$50	\$55	\$90

Counsel practicing in Las Cruces, New Mexico, may claim \$75/hour for in-court and out-of-court services, prior to 5/1/02.

Travel Expenses Incurred

<u>Mileage</u>	<u>1999/2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
(privately owned vehicle)	(4/1/99 & after)	(1/22/01 & after)	(1/21/02 & after)	(1/1/03 & after)
	\$.31/mile	\$.34.5/mile	\$.36.5/mile	\$.36/mile

Subsistence (lodging & meals): Actual cost subject to these local rates.

<u>Location</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<u>Colorado</u>				
Denver	\$125 (up to 9/30/00)	\$128 (up to 9/30/01)	\$154 (up to 9/30/02)	\$158 (up to 9/30/03)
	\$128 (10/1/00 & after)	\$154 (10/1/01 & after)	\$158 (10/1/02 & after)	\$159 (10/1/03 & after)
<u>Kansas</u>				
Kansas City/ Overland Park	\$123	\$123	\$123 (up to 9/30/02)	\$126 (up to 9/30/03)
			\$127 (10/1/02-11/7/02)	\$131 (10/1/03 & after)
			\$126 (11/8/02 & after)	
Topeka	\$85	\$85	\$85	\$85
Wichita	\$96 (up to 9/30/00)	\$97	\$97 (up to 9/30/02)	\$101 (up to 9/30/03)
	\$97 (10/1/00 & after)		\$101 (10/1/02 & after)	\$102 (10/1/03 & after)

Subsistence (lodging & meals): Actual cost subject to these local rates.

<u>Location</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<u>New Mexico</u>				
Albuquerque	\$98 (up to 9/30/00) \$103 (10/1/00 & after)	\$103	\$103 (up to 9/30/02) \$107 (10/1/02 - 12/14/02) \$114 (12/15/02 & after)	\$114 (up to 9/30/03) \$111 (10/1/03 & after)
Santa Fe	\$136	\$136	\$145	\$145
Jan. 1–Apr. 30		(up to 9/30/01)		(up to 9/30/03)
May 1–Oct. 31		\$145		\$146
Nov. 1–Dec. 31		(after 10/1/01)		(10/1/03 & after)
<u>Oklahoma</u>				
Oklahoma City	\$103	\$103	\$103 (up to 9/30/02) \$107 (10/1/02 & after)	\$107 (up to 9/30/03) \$110 (10/1/03 & after)
Tulsa	\$85	\$85	\$85	\$85 (up to 9/30/03) \$88 (10/1/03 & after)
<u>Utah</u>				
Salt Lake City	\$117	\$117	\$117 (up to 1/14/02) \$211 (1/15/03 - 2/28/03) \$117 (3/1/02 & after)	\$117 (1/1/03 - 1/14/03) \$207 (1/15/03 - 2/28/03) \$113 (3/1/03 - 9/30/03) \$119 (10/1/03 & after)
<u>Wyoming</u>				
Casper	\$85	\$85	\$85	\$85
Cheyenne	\$85	\$85	\$85	\$85